IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 302 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPORATION

Versus

JAY KUNJ OWNER'S ASSOCIATION

Appearance:
MR PRASHANT G DESAI for appellant.
MR DEVANAND DEVNANI and MISS KALPANA R SHAH for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 30/08/2001

ORAL JUDGEMENT (Per : MR.JUSTICE RAVI R.TRIPATHI)

The present Appeal From Order is filed against the order passed by the learned Principal Judge of City

Civil Court, Ahmedabad below exhibit 5 dated 11.1.2000. By the order impugned in this Appeal From Order Notice of Motion, exhibit 5/6 was allowed and interim relief which was in force in terms of para 10(a) was confirmed and made absolute till final hearing and disposal of the suit. The effect of the interim relief is that the construction for which show cause notice was issued, cannot be demolished by the appellant-- Ahmedabad Municipal Corporation.

2. Mr.P.G. Desai, learned advocate for the appellant Corporation submitted that now that the Ordinance is in force, the plaintiff of the suit will have to take recourse to the provisions of the Ordinance to avail of the benefit(s) conferred by the Ordinance.

3. The learned Judge while making interim injunction absolute has observed that,

> ".. .. Thus, prima facie, it cannot be said that the impugned construction is not regularisable and/ or the approach of the plaintiff is not positive about complying the objections. .. .."

It is clear from the aforesaid observations that the plaintiff was ready to get the construction regularised by submitting a revised plan. It is also observed by the learned Judge that,

> ".. .. In the letter of compliant, it has been categorically stated by the plaintiff that he is prepared to fill up the cellar as may be directed by the defendant and is also prepared to convert it into a parking place as to be directed. .. .."

4. In view of the fact that now the Ordinance is in force, the plaintiff will have to take recourse to the provisions of the Ordinance to avail the benefits under the same. The interim relief cannot be continued because if the same is continued the plaintiff may delay/ avoid taking recourse to the provisions of the Ordinance and avoid discharging duties cast on him under the relevant provisions of the Ordinance. The order of the learned Judge dated 11.1.2000 is quashed and set aside. Interim relief is vacated. The parties are relegated to take recourse available to them under law. The Appeal From Order is allowed accordingly.

(D.M. Dharmadhikari, J.)

(Ravi R. Tripathi, J.)

karim